SINGAPORE REPORTS

LARIZA (SINGAPORE) PTE. LTD. v. BANK NEGARA INDONESIA 1946

[C.A. (Wee Chong Jin C.J., Thean & Chua JJ.) November 6, 1985]

[Singapore – Civil Appeal No. 46 of 1984]

Banking Law – Letter of credit – Transferable and irrevocable sight letter of credit – Uniform Customs and Practice for Documentary Credits (1974 Revision) Art. 46(a) & (b) – Construction of.

Commodity Trading – Contract – Agreement to pay by means of transferable irrevocable sight letter of credit – Refusal of bank to effect transfer.

The appellants were dealers in commodities and had agreed to sell certain quantities of palm oil to their buyers and agreed to buy from their suppliers similar quantities at lower prices. It was agreed that the payment for the palm oil was to be made by means of a transferable irrevocable sight letter of credit to be opened in favour of the appellants, the opening of which was to be advised through the Bank of Canton. The respondents eventually issued the required letter of credit in favour of the appellants. The appellants requested the respondents to transfer in part the letter of credit to their suppliers, but the respondents suggested that transfer be effected by the Bank of Canton. The Bank of Canton declined to effect the transfer on the ground, *inter alia*, that they were merely the advising bank without any engagement on their part. Subsequently the respondents persisted in their refusal to effect the transfer and, as a result, the appellants failed to perform their obligations to their suppliers, and were sued for damages for breach of contract and judgment was entered against them. The appellants then sought a declaration that they were entitled to be indemnified by the respondents against the claims of their suppliers. The High Court dismissed their claim, holding that the appellants had no cause of action against the respondents, and the latter had no obligation to effect the transfer as requested ([1985] 2 M.L.J. 81). On appeal,

Held, allowing the appeal: the respondents by issuing the irrevocable letter of credit designated as transferable must be taken to have consent to a transfer in accordance with the terms thereof. They were under an obligation to effect the transfer as requested by the appellants and should have done so.

[*Editorial Note:* Provisions of article 46 paragraphs (a) and (b) of Uniform Customs and Practice for Documentary Credits (1974 Revision) of the international Chamber of Commerce discussed.]

Cases referred to:

(1) *Urquhart Lindsay & Co. Ltd.* v. *Eastern Bank Ltd.* [1922] 1 K.B. 318.

(2) *Hamzeh Malas & Sons.* v. *British Imex Industries Ltd.* [1958] 2 Q.B. 127, 129.

COURT OF APPEAL.

Belinda Ang Poh Choo (Miss) for the appellants.

Chelva Rajah for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): This appeal turns on the true construction of paragraphs (a) and (b) of Article 46 of the Uniform Customs and Practice for Documentary Credits (1974 Revision) of the International Chamber of Commerce on which, surprisingly, there has been no reported decision. The facts giving rise to this appeal are not in dispute and are these. The appellants are dealers in commodities, including palm oil. By two agreements dated January 30 and February 15, 1980, they agreed to sell to Bakrie & Brothers (Singapore) Pte. Ltd. ("Bakrie") 3,000 metric tonnes and 2,000 metric tonnes of crude palm oil in bulk unbleached at the prices of US$627 per metric ton and US$670 per metric ton respectively. It was a term of both the agreements that payment for the palm oil was to be made by means of a transferable irrevocable sight letter of credit to be opened in favour of the appellants, the opening of which was to be advised through The Bank of Canton, Ltd. ("Bank of Canton"). In order to fulfil and perform the two agreements made with Bakrie, the appellants entered into two agreements with Ban Lee Oil Mill Co (S) Pte. Ltd. ("Ban Lee") for the purchase from Ban Lee of two corresponding qualities of crude palm oil in bulk of the same quality at the lower prices of US$601 per metric ton and US$645 per metric ton respectively. Similarly, under these two agreements payment was to be made by means of an irrevocable sight letter of credit to be opened in favour of Ban Lee.

On February 20, 1980 the appellants were advised by the Bank of Canton that a transferable irrevocable sight letter of credit, No. SIN/042/80 dated February 19, 1980 for US$3,315,050 ("the letter of credit") had been opened by the respondents in favour of the appellants for the account of Bakrie. At first the letter of credit was found by the appellants to be unacceptable as it was not in accordance with the sale and purchase agreements made with Bakrie. However, subsequently, multiple amendments were made thereto as required by the appellants. The appellants then requested the respondents to transfer in part the letter of credit to Ban Lee, but the respondents suggested that the transfer be effected by the Bank of Canton who

were the banker of the appellants. The Bank of Canton declined to effect the transfer on the ground, *inter alia,* that the letter of credit was badly drafted and also that they were merely the advising bank without any engagement on their part. The appellants therefore reverted their request to the respondents for the transfer but the respondents persisted in their refusal to effect the transfer. In the result, the appellants failed to perform their obligations under the agreements made with Ban Lee, and were sued by Ban Lee for damages for breach of contract and judgment was entered against the appellants with damages to be assessed. In the meanwhile, Bakrie had become insolvent and went into liquidation.

On December 8, 1982, the appellants commenced these proceedings against the respondents claiming for damages for breach of contract arising from the issuing and opening by the respondents of the letter of credit and a declaration that the appellants are entitled to be indemnified by the respondents for the amount which may be awarded to Ban Lee, whether by way of damages, interest or costs together with the appellants' costs of defending the action instituted by Ban Lee. The claim was resisted by the respondents who contended that they were not under any obligation to effect the transfer of the letter of credit as requested by the appellants. The High Court dismissed the appellants' claim, holding that the appellants had no cause of action against the respondents as the respondents had no obligation to effect the transfer as requested. Against that decision this appeal is now brought.

It is not in dispute that upon the opening of the letter of credit there arose a contract between the appellants and the respondents whereby the respondents were obliged to pay to the appellants drafts drawn under the letter of credit upon the latter tendering the requisite documents in conformity with the terms thereof. The issue between the parties is whether, as the letter of credit is expressly designated as transferable, the respondents were obliged to effect the transfer of the credit as requested by the appellants. Nowadays, almost invariably, all letters of credit issued by banks are expressed to be subject to the Uniform Customs and Practice for Documentary Credits (1974 Revision) of the International Chamber of Commerce ("the Uniform Customs"), and the letter of credit in the instant case is no exception. The question of transfer of credit is governed by Article 46 of the Uniform Customs, the provisions of which, insofar as relevant, are as follows:

"ARTICLE 46

(a) A transferable credit is a credit under which the beneficiary has the right to give instructions to the bank called upon to effect payment or acceptance or to any bank entitled to effect negotiation to make the credit available in whole or in part to one or more third parties (second beneficiaries).

(b) The bank requested to effect the transfer, whether it has confirmed the credit or not, shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank, and until such bank's charges in respect of transfer are paid.

(c) . . .

(d) A credit can be transferred only if it is expressly designated as 'transferable' by the issuing bank. Terms such as 'divisible', 'fractionable', 'assignable' and 'transmissible' add nothing to the meaning of the term 'transferable' and shall not be used.

(e) A transferable credit can be transferred once only. Fractions of a transferable credit (not exceeding in the aggregate the amount of the credit) can be transferred separately, provided partial shipments are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the credit. The credit can be transferred only on the terms and conditions specified in the original credit, with the exception of the amount of the credit, of any unit prices stated therein, and of the period of validity or period for shipment, any or all of which may be reduced or curtailed.

. . . "

It is abundantly clear that paragraph (a) of Article 46 confers a right on a beneficiary of a transferable irrevocable letter of credit, such as the appellants, to request "the bank called upon to effect payment or acceptance" or "any bank entitled to effect negotiation of the letter of credit" to transfer the credit in whole or in part to one or more third parties nominated by the beneficiary. As a corollary, there arises from this provision an obligation on the part of the bank so requested to effect the transfer. The respondents are the issuing bank of the letter of credit and are a bank "called upon to effect payment or acceptance", and they had been requested by the appellants to effect a transfer of the letter of credit in part to Ban Lee. On the basis of paragraph (a) alone the respondents would be obliged to effect the transfer. However, the respondents rely on paragraph (b) of Article 46 and contend that they are under no obligation to comply with the appellants' request, as paragraph (b) says that "the bank requested, whether it has confirmed the credit or not, shall be under no obligation to effect the transfer except to the extent or in the manner

expressly consented to by such bank and until such bank's charges in respect of the transfer are paid". This argument, in our judgment, is unsustainable. Paragraph (b) by its express terms does not absolve the bank in all circumstances from the obligation to effect a transfer; the bank is obliged to effect a transfer where it has consented to do so. In the instant case, the respondents had issued an irrevocable letter of credit and had designated it as transferable; that being so it must be taken to have consented to a transfer of the letter of credit in accordance with the terms thereof. If it has not so consented, then it should not have designated the letter of credit as transferable. It makes no commercial sense for a bank to have opened an irrevocable letter of credit in favour of a beneficiary and designated it as transferable and thereafter, while the letter of credit remains in force, to say to the beneficiary, when requested to effect the transfer thereof, that it is not obliged to effect the transfer because it has not consented to do so. It is settled law that a bank which opens an irrevocable letter of credit binds itself to make payment to the beneficiary named therein upon the latter tendering the requisite documents in accordance with the terms thereof: see *Urquhart Linday & Company Limited* v. *Eastern Bank, Limited*[1] and the *dictum* of Jenkins L.J. in *Hamzeh Malas & Sons* v. *British Imex Industries Ltd*[2] at p.129, and equally, where such a letter of credit is designated by the bank as transferable, it binds itself to effect a transfer in accordance with the terms thereof, as by the terms of its own letter of credit it has expressly consented to such transfer.

Therefore the respondents by issuing the irrevocable letter of credit designated as transferable must be taken to have consented to a transfer in accordance with the terms thereof. They were under an obligation to effect the transfer as requested by the appellants and should have done so. Accordingly, we allow the appeal, set aside the judgment of the High Court and make an order in terms of a draft order as agreed to between the parties. There will be the usual consequential order for the refund to the appellants or their solicitors of the deposit paid into Court by the appellants as security for costs of the respondents.

Appeal allowed.

Solicitors: *Godwin & Co.; Tan Rajah & Cheah.*

INDO-AUSTRALIAN TRADING CO. PTE. LTD. v. PAKIRI KOTHANDAPANI

[A.C.J. (Rajah J.) May 23, 1985]

[Singapore – D.C. Appeal No. 20 of 1984]

Landlord and Tenant – Rent-controlled premises – New contractual tenancy – Whether determined – Notice to quit served on Chief Justice – Whether valid – Prohibition of subletting – Plaintiffs aware of violation – Control of Rent Act (Cap. 266).

The appellants sued the respondent for possession of certain premises, owned by them from January 5, 1952, on the ground that by virtue of the events that had taken place, the defendant had become a person in wrongful occupation and consequently a trespasser of the premises, which are premises within the Control of Rent Act. One Sudagar had been a tenant of the premises since 1949. By a written agreement dated January 5, 1952, the plaintiffs let to Sudagar the premises on a monthly tenancy at a rent of $30 per month. This contractual tenancy was duly determined on November 30, 1968, so that Sudagar became the statutory tenant of the appellants as from December 1, 1968. On September 24, 1981, the plaintiffs served on the Honourable Chief Justice as legal personal representative of the Estate of Sudagar a notice to quit dated September 24, 1981, and expiring on October 31, 1981. The defendant put the plaintiffs to strict proof of their claim. The District Court gave judgment in favour of the respondent and hence this appeal.

Held, dismissing the appeal: (1) no new contractual tenancy had come into being and Sudagar's tenancy would therefore continue to be on the same basis and terms as had been before the plaintiffs purchased the premises;

(2) the said notice to quit dated October 17, 1968 had not been served on Sudagar and that therefore his contractual tenancy had not been terminated as pleaded;

(3) the plaintiffs had not proved the death of Sudagar and the notice to quit dated September 24, 1981, served on the Chief Justice is of no effect;

(4) the Court would have found against the plaintiffs for they had been aware of violations of prohibition to sublet for a long time before they took action.

Case referred to:

(1) *Balwant Singh* v. *Tong Lam & Co.* [1963] M.L.J. 33.

DISTRICT COURT APPEAL.

L.A.J. Smith for the appellants/plaintiffs.
Karuppan Chettiar for the respondent/defendant.

Cur. Adv. Vult.

Rajah J.: This appeal arises from a judgment in favour of the defendant in an action brought by the plaintiffs, Indo-Australian Trading Co. Pte. Ltd.,